

Sustainable Development Law & Policy

Volume 9

Issue 1 Fall 2008: *Global Food & Agriculture*

Article 9

USDA Organic: Ecopornography or a Label Worth Searching For?

Blake M. Mensing

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/sdlp>



Part of the [Agriculture Law Commons](#), [Food and Drug Law Commons](#), and the [Health Law and Policy Commons](#)

Recommended Citation

Mensing, Blake M. "USDA Organic: Ecopornography or a Label Worth Searching For?" *Sustainable Development Law & Policy*, Fall 2008, 24, 70.

This Feature is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *Sustainable Development Law & Policy* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

USDA ORGANIC:

ECOPORNOGRAPHY OR A LABEL WORTH SEARCHING FOR?

by Blake M. Mensing*

“**E**copornography,”¹ more commonly known as greenwashing,² is a term that applies to any entity that disseminates disinformation in order to promote an environmentally friendly public image without actually taking significant action to protect the environment.³ Greenwashing is pervasive and a nearly unavoidable component of consumers’ evaluations of potential purchases.⁴ Food producers and packagers are often guilty of greenwashing their products to appeal to the environmentally conscious consumer by using such terms as “free range”⁵ or “all natural.”⁶ The United States Department of Agriculture (“USDA”) has set standards for the use of the word “organic” on food labels. These standards, while significantly more meaningful than those behind the “free range” label, are by no means the most stringent in the world.⁷ Is the USDA organic label indicative of an environmentally friendly product or is it greenwashing?

The 1990 Organic Foods Production Act⁸ provided for the formation of a National Organic Standards Board (“NOSB”) within the USDA’s Agricultural Marketing Service.⁹ The NOSB serves as an advisor to the Secretary of Agriculture in promulgating the final standards that the USDA National Organic Program oversees.¹⁰ The USDA organic labeling standards are broken down into four categories. The first category allows 100% organic products to carry the USDA organic logo.¹¹ In the second category, the USDA organic logo may appear on the packaging if, excluding water and salt, the product is ninety-five percent organic by weight.¹² Third, the front panel of a product made with seventy percent organic content may state that the product is “made with organic” and it may list a maximum of three organic ingredients.¹³ Last, if the product is made with less than seventy percent organic content, the back or side panel may list those ingredients that are organic.¹⁴

Since October 21, 2002, it has been a federal offense punishable with a maximum civil penalty of \$10,000 to place the word “organic” on any food product that has not been certified by a USDA accredited certifier or state certification program.¹⁵ Making uncertified labeling a federal offense should tend to reduce the probability of greenwashing. However, it is important to note that although the organic certification process focuses on the materials and methods of production,¹⁶ some synthetic materials are nonetheless allowed in foods labeled “USDA organic.”¹⁷ For example, nitrates and nitrites are permitted in organic meats.¹⁸ These chemicals give meat the bright red color that, to the average consumer, denotes “freshness.”¹⁹ Meat that does not have nitrates or nitrites added will naturally turn an unappetizing grey color before it decomposes or spoils.²⁰ Consumers are eating

chemically dyed meat carrying the USDA organic label. Despite the strict certification process behind the USDA organic label,²¹ a charge with significant gravamen may be leveled at the agency for allowing synthetics in foods labeled “organic.”²²

Synthetic additives permitted under an organic label are not the only area of weakness in the USDA labeling standard. The USDA may validly be charged with greenwashing for the standards behind the “free range” label, which on its face seems to indicate safe and humane treatment of animals raised for consumption. However, under USDA standards, an animal that is “free range” must be given merely the opportunity to go outside for an undetermined period of time.²³ There is no actual guarantee under the “free range” label standard that the animal exited its enclosure.²⁴ A willingness on the part of the USDA to lend credence to “free range” labels raises suspicions about the organic label as well.

If the USDA organic label is bordering on greenwash, then what standard is worth searching for? One possible answer is the Demeter Biodynamic certification, which imposes more stringent requirements than the USDA organic certification standard.²⁵ Demeter, Norway’s national organic certification body, includes the Demeter standard in its organic certifications.²⁶ The Demeter standard has long enjoyed popularity in Europe, Australia, and New Zealand,²⁷ and is currently used in wineries and vineyards in the United States.²⁸ It focuses on treating a farm as a living organism, with frequently-composted soil as its heart.²⁹ Because the Demeter standard goes above and beyond what the USDA requires for its “organic” label, using the standard would help assuage the fears of American consumers facing a heavily-greenwashed marketplace.³⁰ The current USDA standard has been watered down to the point of greenwashing because synthetics such as nitrites are permitted in “organic” food. For the organic label to be meaningful, the standards behind it must be closer to the Demeter standard and further from today’s “USDA Organic” standard.



Endnotes:

¹ See Joshua Karliner, *A Brief History of Greenwash*, Mar. 22, 2001, <http://www.corpwatch.org/article.pho?id=243> (last visited Oct. 12, 2008) (describing the vast advertising budgets of high pollution corporations).

Endnotes: USDA Organic continued on page 70

* Blake M. Mensing is a JD candidate, May 2010, at American University Washington College of Law and an MA candidate, May 2010 at American University School of International Service.

ENDNOTES: USDA ORGANIC *continued from page 24*

² See Azocleantech.com, Greenwashing, A Definition of What Greenwashing Is, Examples of Greenwashing and How to Spot Greenwashing, <http://www.azocleantech.com/Details.asp?ArticleID=109> (last visited Oct. 12, 2008) (crediting the term to Jay Westerveld's essay on the hotel industry's campaign to get customers to reuse their towels to help protect the environment while enacting no other policies).

³ Sourcewatch.org, Greenwashing, <http://www.sourcewatch.org/index.php?title=Greenwashing> (last visited Oct. 12, 2008).

⁴ TERRACHoice ENVIRONMENTAL MARKETING INC., THE "SIX SINS OF GREEN-WASHING:" A STUDY OF ENVIRONMENTAL CLAIMS IN NORTH AMERICAN CONSUMER MARKETS (2007), http://www.terrachoice.com/files/6_sins.pdf (last visited Oct. 12, 2008).

⁵ U.S. Dep't of Agric. [USDA] Food Safety and Inspection Service, Fact Sheets: Meet and Poultry Labeling Terms, http://www.fsis.usda.gov/fact_Sheets/Meat_&_Poultry_Labeling_Terms/index.asp (last visited Oct. 16, 2008).

⁶ See Wendy Rickard, *Making Sense of Food Labels*, GAIAM LIFE, <http://life.gaiam.com/gaiam/p/Making-Sense-of-Food-Labels.html> (last visited Oct. 30, 2008) (stating that the USDA only regulates the term "natural" for meat and poultry, and that there is no third-party certifier to back up the claim).

⁷ See Kaare K. Johnsen & Emil Mohr, *Organic Agriculture in Norway 2000*, http://www.organic-europe.net/country_reports/norway/default.asp (last visited Oct. 17, 2008) (detailing the more stringent standards in force in Norway).

⁸ Organic Foods Production Act, 7 U.S.C.A. §§ 6501-6507 (West 2008).

⁹ Organic Trade Association, Organic Foods Production Act Backgrounder, <http://www.ota.com/pp/legislation/backgrounder.html> (last visited Oct. 16, 2008).

¹⁰ *Id.*

¹¹ Organic Trade Association, *The O'Mama Report: How to Read USDA Organic Labels*, http://www.theorganicreport.com/pages/12_how_to_read_the_usda_organic_labels.cfm (last visited Oct. 13, 2008).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Organic Foods Production Act, 7 U.S.C.A. § 6519 (West 2008).

¹⁶ Organic Trade Association, Certification Background, <http://www.ota.com/standards/nop/certification.html> (last visited Oct. 14, 2008).

¹⁷ See 7 C.F.R. § 205.605.

¹⁸ Comments by Albert N. Stubblebine III, President & Rima E. Laibow, Medical Director, Natural Solutions, to U.S. Food & Drug Administration [FDA] regarding Organic Food Labeling Standards (Apr. 7, 2008), <http://www.healthfreedomusa.org/?p=369> (last visited Oct. 17, 2008) [hereinafter National Solutions Foundation].

¹⁹ *Id.*

²⁰ *Id.*

²¹ Organic Foods Production Act, 7 U.S.C.A. §§ 6501-6507, 6515 (West 2008).

²² National Solutions Foundation, *supra* note 18.

²³ Becky Pastor, *Good Label Manners: What 'organic,' 'free range' and 'hormone free' really mean*, SAUCE MAGAZINE, Mar. 29, 2005, <http://www.saucemagazine.com/article/1/61>.

²⁴ *Id.*

²⁵ Organic Gardening, *Organic v. Biodynamic*, <http://www.organicgardening.com/feature/0,7518,s-4-62-560,00.html> (last visited Oct. 17, 2008).

²⁶ Johnsen, *supra* note 7.

²⁷ *Id.*

²⁸ Jonathan Russo, *Demeter Demystified*, ORGANIC WINE JOURNAL, Mar. 17, 2008, <http://www.organicwinejournal.com/index.php/2008/03/demeter-demystified/> (last visited Nov. 1, 2008).

²⁹ TheNibble.com, *Organic v. Biodynamic Agriculture*, <http://www.thenibble.com/reviews/nutri/matter/2006-02.asp> (last visited Oct. 17, 2008).

³⁰ While the adoption of Demeter's Biodynamic standard would increase Demeter's corporate revenues, the stricter standard would still help reduce the influence that agri-business has on policy decisions at the USDA. See e.g., Steve Gilman, *Holding on to Organic!!: A Grassroots Perspective Concerning Big Food's Threat to Organic Standards*, THE NATURAL FARMER, Spring 2006, <http://www.nofa.org/tnf/2006spring/Holding%20On%20To%20Organic!.pdf>.